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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION FOR SUMMARY DISPOSITION

On June 27, 2002, the California Municipal Utilities Association (CMUA)[1] filed a motion for an expedited ruling that summarily disposes of the issue of cost responsibility for departing load customers served by a "publicly owned utility."[2] CMUA refers to this segment of departing load as "municipal customer load." CMUA claims that the record in this proceeding lacks any reference to legal authority by which the Commission may impose cost responsibility on municipal customer load, and requests that the Commission, as a matter of law, summarily dispose of this issue for lack of jurisdiction and in the interest of efficiency.

[1] CMUA is an industry association representing California's publicly owned utilities, which are comprised of 26 electric distribution utilities serving approximately 30 percent of the electric load in California.

[2] As used in CMUA's motion, the term "public owned utility" has reference to the different public agencies listed in Public Utilities Code Section 9604(d), including, among others, municipalities, municipal utility districts, public utility districts, and irrigation districts.

CMUA claims that no party has pointed to any controlling legal authority as a basis for the Commission to impose cost responsibility surcharges on publicly owned utilities or on their customers. CMUA finds only one legal source offered by opposing parties to support the claim that CRS may be imposed on municipal customer load, namely, Decision (D.) 96-04-054. In D.96-04-054, the Commission responded to an emergency motion by Pacific Gas and Electric Company (PG&E) by adopting an "interim" competition transition charge (CTC) to "ensure that customers departing the system after [December 20, 1995] and before the effective date of [the Commission's] final decision on CTC bear responsibility for their fair share of [transition costs.]"[3]

CMUA argues that the parties' reliance on D.96-04-054 in this instance has at least two fatal flaws. First, CMUA claims the decision is only "interim" whereby the Commission "merely accepted without approving PG&E's definition on an interim basis" because the subject was to be addressed thoroughly in subsequent proceedings on the permanent CTC.[4] CMUA argues that an "interim" decision should not be accorded precedential weight. Second, CMUA argues that it is legally insufficient for the Commission to presume that it has authority over publicly owned utilities, but must have express legislative authority.[5]

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[3] D.96-04-054 at 11.

[4] *Id.* at 21.

[5] *See* County of Inyo v. Public Utilities Com., 26 Cal. 3d 154, 166 (1980) (quoting from Los Angeles Met. Transit Authority v. Public Utilities Com., 52 Cal.2d 655, 661 (1959)) which states: "*In the absence of legislation otherwise providing, the Commission's jurisdiction to regulate public utilities extends only to the regulation of privately owned utilities.'…The commission has no jurisdiction over municipally owned utilities unless expressly provided by statute."*

CMUA claims that the California Constitution and Public Utilities Code both limit the extent of Commission jurisdiction and also expressly establish the authority of publicly owned utilities to regulate their own operations.[6] CMUA claims that assigning cost responsibility to municipal customer load would encroach upon these boundaries.

CMUA further claims that Assembly Bill (AB) 1X did not confer authority on the Commission to impose CRS for Department of Water Resources (DWR) costs on customers of publicly owned utilities. CMUA claims that the Commission explicitly acknowledged its lack of authority to address the issue. In D.02-02-051, the Commission rejected appeals by Edison and PG&E that DWR charges should apply to publicly owned utilities that subsequently serve customers who were part of the utilities' load when DWR began its procurement program.[7] The Commission indicated that Edison's and PG&E's "assertions of potential harm are too vague, and we decline to make the suggested changes."[8] The Decision went on to say "Edison's suggested changes appear aimed at requiring certain customers of municipal utilities pay Bond Charges; that, however, is an issue for the legislature."[9]

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[6] *See, e.g.*, Ca. Const., Art. XI, §§ 7 and 9, and Art. XII, § 3. *See*, also, Public Utilities Code § 10002 (municipal corporations); Water Code § 22115 (irrigation districts); Public Utilities Code § 11501 *et seq.* (municipal utility districts); Public Utilities Code § 15501 *et seq.* (public utility districts)

[7] Edison's Comments on the Proposed Rate Agreement, February 5, 2002, at 2; PG&E's Comments on the Proposed Rate Agreement, February 5, 2002, at 7.

[8] D.02-02-051 at 35.

[9] *Id.*

Replies in opposition to the motion were filed by PG&E, Southern California Edison (Edison), and San Diego Gas and Electric Company (SDG&E). A reply in support of the motion was filed by the City of Corona.

Opponents of the motion argue that CMUA confuses the core issue before the Commission, namely, whether authority exists to allocate costs that have been incurred to benefit the utilities' bundled customers whether they remain on bundled service or depart to receive service from a municipal utility. Opponents claim that CMUA has not properly framed the relevant question at issue in this proceeding by focusing on the Commission's authority to regulate or impose charges on municipal utilities or their customers. City of Corona supports the motion and reiterates arguments made by CMUA.

Discussion

There is no dispute with CMUA's contention that constitutional and statutory law preclude this Commission from regulating the rates or service of publicly-owned municipal utilities. The point in dispute is whether the imposition of cost responsibility surcharges (CRS) on current customers of such publicly-owned utilities would necessarily constitute regulation of the rates or service of such publicly-owned utilities.

CMUA has failed to demonstrate that any imposition of cost responsibility surcharges on prior IOU customers that subsequently departed to publicly-owned utilities necessarily constitutes regulation of a publicly-owned utility. A distinction must be drawn between holding customers responsible for costs they caused to be incurred in connection with being served by an IOU versus regulating rates charged by publicly-owned municipal utilities for service rendered after departing from the load of the IOU. Its is within the jurisdiction

of this Commission to hold customers responsible for the former, but it is outside of the Commission's jurisdiction to regulate the latter.

CMUA claims that AB1X did not confer authority on this Commission to impose cost responsibility charges on retail end users of municipal utilities to recover "future" costs of the DWR. CMUA's reference to "future" costs is somewhat ambiguous. In this proceeding, cost responsibility charges are being considered relating to costs triggered by events that transpired during the period of time that customers were on bundled utility service. Although that period of time occurred in the past, DWR has yet to recover all of its costs for those past periods, and is expected to continue to incur costs in the future relating to long term contracts that were entered into during that prior period when migrated customers were still taking bundled utility service. Customers that have since departed the utility system may still be found to subject to "future" DWR costs to the extent those costs relate to prior contract obligations entered into on behalf of those customers.

Moreover, Water Code Section 80110 expressly provides that end-use customers shall be deemed to have purchased the power that DWR provides and imposes a direct obligation on those customers to pay DWR's costs. If current customers of municipal utilities were taking bundled service from the utility during some of the period during which DWR has been purchasing and selling power under AB1X, then this provision extends to include such customers. Nothing in Section 80110 carves out exceptions to cost responsibility depending on what subsequent actions a customer may have taken to depart from bundled service. The legislature authorized the Commission in Water Code Section 80114 to "take those actions necessary to ensure that the component rates available to the utilities are used to recover DWR's revenue requirement." Accordingly,

there is legislative mandate to support the Commission's authority to impose appropriate collection of charges due to DWR from all end use customers on whose behalf those purchases were made irrespective of their subsequent departure to a municipal utility.

In D.96-04-054, the Commission determined that so-called "competition transition costs" (CTC) should be borne by all customers, including departing load customers, in rough proportion to the benefits they received. The fact that some departing load customers subsequently took service from a publicly-owned municipality did not relieve them of responsibility for CTC costs as determined by D.96-04-054. Moreover, the provisions of AB 1890 expressly provide for the recovery of ongoing transition costs from DL customers, including those that migrate to municipal utilities. The need to address whether the Commission had exceeded its authority in D.96-04-054 was made moot by the subsequent passage of AB 1890. In its rehearing decision, the Commission referenced the authority that had been granted by the Legislature in AB 1890: "[W]e conclude that many of the issues raised by the rehearing parties have been made moot in light of the enactment of AB 1890 and our compliance with the statute in our implementation of the ICTC in D.96-11-041. Thus, we believe it is unnecessary to discuss the particular merits of these issues."[10]

Thus, jurisdictional basis exists for imposing cost responsibility for ongoing CTC on departing load that became municipal customers in accordance with AB 1890. Public Utilities Code Section 367 provides for the recovery of ongoing CTC, and Public Utilities Code Section 369 specifies that the obligation

[10] D.97-11-031 at 7.

to pay ongoing CTC cannot be avoided by "the formation of a publicly owned electrical corporation on or after December 20, 1995." The Commission's authority to impose such charges thus stems from the prior customers' status as bundled customers of an IOU, and does not presume any jurisdiction over the regulation of rates or services offered by a publicly-owned municipal utility. The costs that are relevant in this proceeding to the departing load customers relate only to IOU service over which the Commission exercises jurisdiction, and not the ongoing service they are currently receiving from a publicly-owned utility.[11]

CMUA also seeks to support its motion by citing a footnote reference in D.02-02-051, in which the Commission adopted the "Rate Agreement" relating to the imposition of Bond Charges for DWR costs. The reference made by CMUA to the footnote in D.02-02-051 alludes to "certain suggested changes" offered by Edison that appeared "aimed at requiring certain customers of municipal utilities pay Bond Charges." The footnote observes: "that is an issue for the legislature." CMUA does not identify in its motion the specifics of Edison's "suggested changes" or the terms and conditions by which "certain customers" of municipal utilities would pay Bond Charges. The footnote merely references "certain customers" of municipal utilities. Neither the cited footnote, nor CMUA, elaborates as to whether the customers being referenced are former IOU

[11] The timing of the end of the "rate freeze" pursuant to Public Utilities Code Section 368, the corresponding impact on transition cost recovery, and the definition of what were formerly considered stranded costs are issues that are being considered in A.00-11-038 *et al.*, in the rehearing of D.01-03-082, as ordered by D.02-01-001. The Commission is also considering in that proceeding the impact of AB 6X and AB 1X on the various provisions of AB 1890. Any determinations made in this proceeding are subject to adjustment, depending on Commission findings in A.00-11-038 *et al.* Nothing in this ruling or proceeding is intended to prejudge those issues.

customers that subsequently became departing load, or whether the Bond Charges in question would be assessed as a function of current service rendered by the municipal utility or as a function of prior service rendered by the IOU.

Without more complete explanation of its context or implications, it would be premature simply to assume that the footnote in D.02-02-051 was intended to foreclose the Commission from exploring whether cost responsibility should be imposed on DL customers that subsequently became municipal utility customers, at least for the time that they were previously bundled customers.

As stated above, it is not the intent of this proceeding to regulate the rates of municipal utilities, or to adjudicate matters that are issues for the legislature with respect to municipal utilities' assessment for a share of DWR Bond Charges. Imposition of cost responsibility on DL customers in the form of Bond Charges, however, is not intended to address the rates charged by publicly owned utilities. The intent of the proceeding is much more limited in scope, namely, to determine the cost responsibility for customers that initially received service from the IOU, but subsequently departed. The assessment of Bond Charges in this limited context is merely intended to reflect cost responsibility for the period of time during which the customer took service from an IOU subject to Commission jurisdiction to compensate for the prior period that they were customers of the IOU.

In consideration of all of the factors discussed above, the motion of CMUA is denied.

IT IS RULED that the motion of the California Municipal Utilities Association is hereby denied for summary disposition of issues relating to certain departing load customers.

Dated September 27, 2002, at San Francisco, California.

/s/ Thomas R. Pulsifer
Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion for Summary Disposition on all parties of record in this proceeding or their attorneys of record.

Dated September 27, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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